

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7014 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

JUGAJI NATHAJI THAKOR

Versus

EXECUTIVE ENGINEER

Appearance:

1. Special Civil Application No. 7014 of 2002
MR VIKRAM J THAKOR for Petitioner No. 1
MR LR PUJARI, AGP for Respondent No. 1-2
NOTICE SERVED BY DS for Respondent No. 3
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CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 24/08/2004

ORAL JUDGEMENT

RULE. Mr.Pujari, learned AGP, waives service of
rule on behalf of the respondent No.1 and 2.

2) By filing this petition, the petitioner has challenged the order dated 22-7-2002 passed by the Assistant District Judge, Ahmedabad (Rural) at Gandhinagar, by which the learned Judge has rejected Civil Misc.Application No.24/2002 preferred by the present petitioner for condonation of delay in filing Appeal. The petitioner-herein has filed Appeal before the District Court, Ahmedabad (Rural), Gandhinagar, against an order passed by the authority under the Public Premises Eviction Act in Eviction case No.191/1999. In preferring such Appeal, there was a delay of about 26 days, though in the application for condonation of delay it is stated that there is a delay of 15 days. The said application was heard by the learned Assistant District Judge, Ahmedabad (Rural), Gandhinagar, and he has rejected the same by his order, which is impugned in this petition.

3) Learned advocate for the petitioner submitted that the petitioner was under impression that limitation period for filing such Appeal is 30 days, though under the Act, appeal is required to be filed within 15 days. It is submitted that since the petitioner, who is the President of Thakor Samaj, was busy in some other work, he could not contact his advocate and, therefore, it is prayed that delay in filing such Appeal may be condoned. However, the appellate Judge came to the conclusion that no satisfactory ground is made out in the application for condonation of delay. On merits also, the learned appellate Judge has found that there is no prima facie case in favour of the applicant, as the applicant is not in a position to pay the arrears of rent.

4) I have heard learned advocates of both the sides, in my view, instead of rejecting the delay condonation application the learned appellate Judge should have decided the Appeal on merits, as in his application, the applicant has stated that he was under the impression that limitation period for filing Appeal is 30 days and not 15 days and as the applicant was busy in some other work, he could not contact his advocate in time and therefore, there was a delay in filing such appeal. So far as merits of the appeal is concerned, the said aspect can be considered by the Court at the time of deciding application for interim relief. It was not necessary for the appellate Judge to make any observations regarding prima facie case while deciding application for condonation of delay.

5) Under these circumstances, this petition is

allowed. The effect of this order would be that the application of the petitioner being Civil Misc.Application No.24/2002 is allowed and delay in preferring the Appeal is condoned. The appellate Judge may now proceed with the main appeal on its own merits and if any interim relief is pressed into service by the petitioner, it is for the appellate Judge to consider whether it can be granted or not, however, it is clarified that this Court has not expressed its opinion on this point.

6) Accordingly, this petition is allowed only on the limited point of condoning delay in filing appeal. Rule made absolute accordingly. No costs.

(P.B.Majmudar, J.)

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